



DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-822]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Thai Union Group Public Co., Ltd. (Thai Union Group), a producer/exporter of certain frozen warmwater shrimp (shrimp) from Thailand, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3)(ii), the Department of Commerce (the Department) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on shrimp from Thailand with regard to Thai Union Group. Based on the information received, we preliminarily determine that Thai Union Group is the successor-in-interest to Thai Union Frozen Products Public Co., Ltd. (Thai Union Frozen) for purposes of determining AD liability. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the Federal Register an AD order on certain frozen warmwater shrimp from Thailand.¹ On September 17, 2015, Thai Union Group, a producer/exporter of Thai shrimp covered by this order, changed its name from Thai Union Frozen to Thai Union Group. On October 5, 2015, Thai Union Group requested that the Department conduct an expedited changed circumstances review under section 751(b) of the Act, 19 CFR 351.216(c), and 19 CFR 351.221(c)(3)(ii).² In this request, Thai Union Group asked the Department to determine that it is the successor-in-interest to Thai Union Frozen and, accordingly, to assign it the cash deposit rate of the Thai Union group of companies, of which Thai Union Frozen is a part.^{3, 4} On October 8, 2015, we issued a supplemental questionnaire to Thai Union Group, to which the company responded on October 21, 2015.⁵

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off,

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (February 1, 2005).

² See Letter from Thai Union Group, Re: “Frozen Warmwater Shrimp from Thailand: Request for Expedited Changed Circumstances Review,” dated October 5, 2015 (Thai Union CCR Request).

³ Id.

⁴ This group consists of Thai Union Frozen, Thai Union Seafood Co., Ltd., Pakfood Public Company Limited, Okeanos Co. Ltd., Okeanos Food Co., Ltd, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., and Takzin Samut Co. Ltd. (collectively, “Thai Union”).

⁵ See Letter from Thai Union Group, Re: “Frozen Warmwater Shrimp from Thailand: Changed Circumstances Review Supplemental Questionnaire Response,” dated October 21, 2015 (CCR Supplemental Questionnaire Response).

shell-on or peeled, tail-on or tail-off,⁶ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

⁶ “Tails” in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.⁷

⁷ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), the Department will conduct a CCR upon receipt of a request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Thai Union Group supporting its claim that it is the successor-in-interest to Thai Union Frozen demonstrates changed circumstances sufficient to warrant such a review.⁸

In accordance with the above-referenced regulation, the Department is initiating a CCR to determine whether Thai Union Group is the successor-in-interest to Thai Union Frozen. When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a CCR concurrently.⁹ We determined that expediting this CCR is warranted because we have the information necessary to make a preliminary finding already on the record, in accordance with our practice.¹⁰

In determining whether one company is the successor-in-interest to another, the Department examines a number of factors including, but not limited to, changes in management,

found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

⁸ See 19 CFR 351.216(d).

⁹ See 19 CFR 351.221(c)(3)(ii); see also Certain Pasta From Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, 80 FR 33480, 33480-41 (June 12, 2015) (Pasta From Italy Preliminary Results) (unchanged in Certain Pasta From Italy: Final Results of Changed Circumstances Review, 80 FR 48807 (August 14, 2015) (Pasta From Italy Final Results)).

¹⁰ See, e.g., Pasta From Italy Preliminary Results, 80 FR at 33480-41 (unchanged in Pasta From Italy Final Results, 80 FR at 48807).

production facilities, supplier relationships, and customer base.¹¹ While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.¹² Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.¹³

In its October 5 and October 21, 2015, submissions, Thai Union Group provided information to demonstrate that it is the successor-in-interest to Thai Union Frozen. Thai Union Group states that the company's management, production facilities and customer/supplier relationships have not changed as a result of the corporate name change. To support its claims, Thai Union Group submitted the following documents: (1) resolutions passed at a board of directors' meeting for the company as well as shareholder meeting minutes, demonstrating approval of the name change;¹⁴ (2) a letter announcing the company's name change to its

¹¹ See, e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand, 75 FR 61702, 61703 (October 6, 2010) (Shrimp From Thailand Preliminary Results) (unchanged in Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand, 75 FR 74684 (December 1, 2010) (Shrimp From Thailand Final Results)); and Industrial Phosphoric Acid From Israel: Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944, 6946 (February 14, 1994).

¹² See Shrimp From Thailand Preliminary Results, 75 FR at 61703 (unchanged in Shrimp From Thailand Final Results, 75 FR at 74684).

¹³ Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan, 67 FR 58, 59 (January 2, 2002); and Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review, 75 FR 34688, 34689 (June 18, 2010).

¹⁴ See Thai Union CCR Request, at Exhibit 1.

customers and suppliers;¹⁵ (3) two affidavits, both dated September 2015, from the Thai Ministry of Commerce's Department of Business Development, certifying that the directors and other business information appearing in the Thai company register for Thai Union Group and Thai Union Frozen are identical;¹⁶ (4) a list showing the management of Thai Union Frozen before, and Thai Union Group after, the name change;¹⁷ (5) a list showing the Board of Directors of Thai Union Frozen before, and Thai Union Group after, the name change;¹⁸ (6) Thai Union Frozen's 2014 audited financial statements;¹⁹ (7) a list of the suppliers of Thai Union Frozen before, and Thai Union Group after, the name change;²⁰ and (8) a list of the customers of Thai Union Frozen before, and Thai Union Group after, the name change.²¹

Based on the evidence on the record, we preliminarily find that Thai Union Group is the successor-in-interest to Thai Union Frozen. We find that Thai Union Group operates as the same business entity as Thai Union Frozen and that its Board of Directors, management, production facilities, supplier relationships, and customers have not changed as a result of its name change. Thus, we preliminarily find that Thai Union Group should receive the same antidumping duty cash-deposit rate with respect to the subject merchandise as Thai Union Frozen, its predecessor company.²²

¹⁵ Id., at Exhibit 2.

¹⁶ Id., at Exhibit 5; and CCR Supplemental Questionnaire Response, at Exhibit 2.

¹⁷ See Thai Union CCR Request, at Exhibit 3.

¹⁸ Id., at Exhibits 4 and 5.

¹⁹ See CCR Supplemental Questionnaire Response, at Exhibit 3.

²⁰ See Thai Union CCR Request, at Exhibit 7.

²¹ Id.

²² Thai Union Frozen received a 1.10 percent dumping margin as part of Thai Union in the 2012-2013 administrative review of the AD order on shrimp from Thailand. See Certain Frozen Warmwater Shrimp From

Should our final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced or exported by Thai Union Group at Thai Union Frozen's cash deposit rate, effective on the publication date of our final results.

Public Comment

Interested parties may submit case briefs and/or written comments not later than 14 days after the publication of this notice.²³ Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than five days after the deadline for filing case briefs.²⁴ Parties who submit case briefs or rebuttal briefs in this changed circumstance review are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Interested parties who wish to comment on the preliminary results must file briefs electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time on the date the document is due.

Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013, 79 FR 51306 (August 28, 2014) (corrected by Certain Frozen Warmwater Shrimp From Thailand: Notice of Correction to the Final Results of the 2012-2013 Antidumping Duty Administrative Review, 79 FR 62099 (October 16, 2014)). We note that Thai Union Frozen is also a respondent in the current 2014-2015 administrative review of this antidumping duty order. See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews, 80 FR 16634 (March 30, 2015). At the conclusion of this CCR, if we determine that Thai Union Group is the successor-in-interest to Thai Union Frozen, we will assign Thai Union Group an updated cash deposit rate based on the final results of that review.

²³ See 19 CFR 351.309(c)(ii).

²⁴ See 19 CFR 351.309(d).

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 14 days of publication of this notice.²⁵ Parties will be notified of the time and date of any hearing, if requested.²⁶

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this changed circumstance review no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: November 17, 2015.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

Billing Code 3510-DS-P

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²⁵ See 19 CFR 351.310(c); see also 19 CFR 351.303 for general filing requirements.

²⁶ See 19 CFR 351.310.